



[7590-01-P]

NUCLEAR REGULATORY COMMISSION

[NRC-2011-0288]

Interim Staff Guidance on Changes During Construction

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft interim staff guidance; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing this notice for use of, and to solicit public comment on the draft Interim Staff Guidance (ISG) COL-ISG-025 "Interim Staff Guidance on Changes During Construction." This ISG provides guidance to the NRC staff on the Preliminary Amendment Request (PAR) review process available to the initial combined license (COL) licensees through a license condition for use as an elective precursor to the license amendment process.

DATES: Submit comments by [INSERT DATE 75 DAYS AFTER PUBLICATION]. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comment by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- **Federal Rulemaking Web site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2011-0288. Address questions about NRC dockets to Carol Gallagher; telephone: 301-287-3422; e-mail: Carol.Gallagher@nrc.gov. For technical

questions, contact the individual listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **Mail comments to:** Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: 3WFN, 06A44M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

For additional direction on accessing information and submitting comments, see “Accessing Information and Submitting Comments” in the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: Earl Libby, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-0522, e-mail: Earl.Libby@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC-2011-0288 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this action by the following methods:

- **Federal Rulemaking Web site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2011-0288.

- **NRC’s Agencywide Documents Access and Management System (ADAMS):** You may access publicly-available documents online in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “ADAMS Public

[Documents](#)” and then select “[Begin Web-based ADAMS Search.](#)” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. The COL-ISG-025 “Interim Staff Guidance on Changes during Construction under 10 CFR Part 52” is available electronically under ADAMS Accession Number ML13045A125.

- **Federal Rulemaking Web Site:** Public comments and supporting materials related to this notice can be found at <http://www.regulations.gov> by searching on Docket ID NRC-2011-0288.

B. Submitting Comments

Please include Docket ID NRC-2011-0288 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at <http://www.regulations.gov> as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

Background

The NRC staff is issuing this second notice for use of, and to solicit public comments on, draft COL-ISG-025 (ADAMS Accession No. ML13045A125). Previously, on January 11, 2012, the NRC staff issued notice for the use of, and to solicit public comments on, the prior draft COL-ISG-025 (ADAMS Accession No. ML111530026) (Docket ID: NRC-2011-0288). The NRC staff is revising COL-ISG-025 to update the PAR review process, clarify the information that should be included with a PAR submittal, and include the staff consideration of comments received on the prior version of the ISG.

This ISG provides guidance to the staff on the PAR review process available to the initial Part 52 of Title 10 of the *Code of Federal Regulations* (10 CFR), COL licensees through a license condition for use as an elective precursor to the license amendment process. The PAR process facilitates the installation and testing of plant changes during construction. The NRC staff continues to use and evaluate the PAR process during the construction of the nuclear power plants licensed under 10 CFR Part 52 and will finalize this ISG for inclusion in either in a new Regulatory Guide (RG) or in the next major revision of RG 1.187, "Guidance for Implementation of 10 CFR 50.59, Changes, Tests, and Experiments," November 2000 (ADAMS Accession No. ML003759710).

Backfitting and Issue Finality

Licensees may voluntarily follow the PAR process described in this draft ISG. Because the PAR process in this ISG is internal guidance to the NRC staff, it is not a matter for which either nuclear power plant applicants or licensees are protected under the Backfit Rule in 10 CFR 50.109 or the issue finality provisions under 10 CFR Part 52. A more detailed discussion of backfit and issue finality is included in the ISG.

Comments on the prior Draft Interim Staff Guidance

A. Overview of Public Comments

The NRC issued the prior draft COL-ISG-025, *Changes During Construction under 10 CFR Part 52*, in the *Federal Register* on January 11, 2012 (77 FR 1749). The period for submitting comments on the draft COL-ISG-025 closed 75 days later.

The Commission received one comment submission containing seven comments on the Draft ISG from the Nuclear Energy Institute (NEI) (ADAMS Accession No. ML12089A019).

The comment summaries and the NRC's response for this submission are addressed below:

Comment Identification Format

All comments are identified uniquely by using the format [X]-[Y], where:

[X] Represents the comment submission identification number; and,

[Y] Represents the comment number, which the NRC assigned to the comment.

B. Comment Identification and Comment Response

NEI Comment 1-1: Editorial and Clarification. Insert on page 1, para. 2, second sentence, an apostrophe in "licensee's." Additionally, to be clear about how the process works, revise the end of the same sentence as follows, "...including ((strikeout) an applicability determination evaluation), the safety-security interface evaluation, the construction impacts evaluation and the 10 CFR 50.59-like review (including applicability determination, screening, and evaluation, as applicable)."

NRC Response: The NRC staff agrees in part with this comment to group and sequence the licensee's plant change review processes as they are generally conducted by licensees. The ISG-025 was changed on page 1, second paragraph to read as follows: "The

licensee's evaluation process comprises several successive steps, including the safety-security interface evaluation, the construction impacts evaluation and the 10 CFR 50.59 and 10 CFR 50.59-like evaluation (including applicability determination, screening, and evaluation, as applicable)."

NEI Comment 1-2: When not referring to a specific element of the 10 CFR 50.59-like process (such as applicability determination, screening or evaluation), the ISG should refer to the 10 CFR 50.59-like process "review" process. Revise on page 2, para. 1, the first sentence as follows: "When the licensee's ((strikeout) screening evaluation) 10 CFR 50.59-like review process determines..."

NRC Response: The staff does not agree with this comment. The 10 CFR 50.59-like process is an evaluation as established in the appendices of 10 CFR Part 52 at Section VIII.B.5.b which is invoked from Section VIII.B.5.a which states "...[W]hen evaluating the proposed departure..."

NEI Comment 1-3: This paragraph discusses the use of the PAR and LAR processes to describe proposed plant changes or modifications that are solely due to a change in Tier 1 or Tier 2* information and are not because the change represents a potential safety issue. Like 10 CFR 50.59, the 10 CFR 50.59-like process is not a "safety" evaluation, but rather a review to determine if prior NRC approval is required. Re-word on page 2, para. 3, the last part of the first sentence of paragraph three as follows: "...and not because the change ((strikeout) represents a potential safety issue) has been determined to require prior NRC approval."

NRC Response: The NRC staff agrees with this comment that the 10 CFR 50.59 process and the 10 CFR 50.59-like process of 10 CFR Part 52, Appendices Section VIII are to determine if prior NRC approval of a plant change is required before implementing that change.

The ISG-025 was changed on page 2, paragraph 3 to read as follows. “The PAR and related LAR requests may describe proposed plant changes or modifications that require a license amendment (and possible exemption) because they describe a change to Tier 1 or Tier 2 information and, as part of the certification of the referenced design, such changes were determined to require prior NRC approval. This is analogous to Technical Specification changes under 10 CFR Parts 50 and 52, which always require a license amendment.”*

NEI Comment 1-4: Clarification. Insert on page 3, para. 2, “Appendix C,” after “NEI 96-07.”

NRC Response: The NRC staff agrees with this comment because the change specifically identifies the applicable industry guidance for the preparation and submittal of PAR submissions to the NRC. The ISG-25 was changed on page 3, paragraph 2 to read as follows: “NEI 96-07, Appendix C provides guidance on the preparation and submittal of PAR submissions.”

NEI Comment 1-5: Given the similar preliminary nature of the “no significant hazards consideration” determination and the preliminary determination of categorical exclusion from environmental review, we recommend the focus of the staff’s PAR review be on the reasonableness of the preliminary determinations, not their adequacy. Adequacy of these licensee (final) determinations is determined as part of the [license amendment request] LAR review. Modify ISG-025 page 4, para. 4 and page 5, para. 1 & 2, to reflect that the PM [Project Manager] shall review the reasonableness of the PAR’s preliminary “no significant hazards consideration” determination.

NRC Response: The NRC staff removed the provision for including a no significant hazards consideration determination (10 CFR 50.92) as well as a categorical exclusion from

environmental review (10 CFR 51.22(c)) from the PAR submission; therefore this comment is no longer relevant. These two analyses, the no significant hazards consideration determination and the basis for categorical exclusion from environmental review, are both contained within the related LAR and are reviewed by the staff during the acceptance review of the related LAR. This action lowers the aggregate reporting burden on a licensee that elects to use the PAR process.

NEI Comment 1-6: It may be determined later that it might be best to endorse NEI 96-07, Appendix C via a separate regulatory guide for new plants, so that RG 1.187 remains focused on 10 CFR Part 50 licensees. We expect that the best approach will be determined based on further discussions of Appendix C. Modify page 6, para. 3, ISG-25 under Final Resolution Method to allow the option for a separate regulatory guide to be used to endorse NEI 96-07, Appendix C.

NRC Response: The NRC staff agrees with this comment that a separate RG may be developed in the future that is specific to 10 CFR Part 52 licensees and could maintain the RG 1.187 applicability to 10 CFR Part 50 licensees. The ISG-025 was changed on page 6, paragraph 3 to read as follows: "Final Resolution Method: This issue will be resolved either in a new RG or in the next revision to RG 1.187, "Guidance for Implementation for 10 CFR 50.59, Changes, Tests, and Experiments" (ADAMS Accession No. ML003759710)."

NEI Comment 1-7: In various NRC-industry meetings on ISG-025, the NRC staff has said that licensees should use the PAR process when approval of the LAR is needed within one year of submittal of the LAR. It is recommended that this timing aspect be addressed in ISG-025.

NRC Response: The NRC staff does not agree with this comment. A PAR may be voluntarily submitted by a licensee at any time prior to, concurrent with or after the submittal of the related LAR (although the NRC cannot issue a PAR notification until the LAR is submitted). The 1 year- time frame discussed is the expected processing time allocated to the staff's detailed technical review of a LAR. No change was made to the ISG as a result of this comment.

Other Changes to Draft Interim Staff Guidance

In addition to the changes made in response to public comments, as discussed above, this draft ISG-025 contains one substantial change which was derived from the lessons learned from the NRC staff's administrative practices during the past year of processing PARs and LARs for the new nuclear power plants under construction.

The criteria for issuing a PAR notification are dependent upon the staff's acceptance of the related LAR for detailed technical review. The staff will not issue the determination on the PAR until after the staff has accepted the related LAR for detailed technical review. This repositioning of the staff's determination reduces the regulatory burden on licensees by recognizing that the licensee's proposed basis for the no - significant hazards determination and the categorical exclusion from the National Environmental Policy Act evaluation is contained in the related LAR.

Because these two aspects are evaluated by the staff during the acceptance review of the related LAR, the provision for the licensee to submit this information in the PAR, and the staff's examination of this information during its consideration of the PAR were removed from COL-ISG-025.

This draft COL-ISG-025 clarifies that the staff will not issue a determination on the PAR until two conditions are satisfied; 1) the licensee submits the related LAR and, 2) the staff has accepted the related LAR for detailed technical review.

Dated in Rockville, Maryland, this 7th day of August 2013.

For the Nuclear Regulatory Commission.

Joseph Colaccino, Chief, Policy Branch
Division of Advanced Reactors and Rulemaking
Office of New Reactors

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